THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NOS. 19492, 19493 AND 25597 OF 2006

Dated 20-08-2007

WRIT PETITION NO.19492 OF 2006

Between:

AGI Glaspac … Petitioner

And

Assistant Commissioner (CT)-IV … Respondent

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NOS. 19492, 19493 AND 25597 OF 2006

COMMON ORDER (Per the Hon'ble Sri Justice Bilal Nazki):

All these writ petitions raise common questions of law. Hence, they have been heard together and disposed of by this common order.

These three writ petitions have been filed by the same assessee. Writ Petition Nos. 19492 and 19493 of 2006 have been filed for different assessment years challenging the orders of assessment made by the respondent-Assistant Commissioner. Writ Petition No.25597 of 2006 is arising out of the orders impugned in Writ Petition Nos.19492 and 19493 of 2006 by the authorities below.

W.P.Nos.19492 and 19493 of 2006: The assessee had claimed input tax credit on Low Sulpher Heavy Stock (LSHS) and Liquefied Petroleum Gas (LPG) during the period 2005-2006 and 2006-2007 purchased by him locally from the Public Sector Companies. The controversy is whether LSHS and LPG are the products falling under Section 13(1) of the Andhra Pradesh Value Added Tax Act, 2005
(for short "the Act") read with Rule 20(1) of the Andhra Pradesh Value Added Tax Rules, 2005 (for short "the Rules).

These writ petitions were entertained on the ground that the

assessing authority had relied on the opinion of the Advance Ruling Committee and as such the appeal would have been useless as the appellate authority was also bound by the opinion of the Advance Ruling Committee. The assessing authority in its order stated that the assessee was the manufacturer of glass bottles and as such, there is no dispute as to for what purpose the assessee is using LSHS and LPG and the assessing authority also noted that the assessee was using LSHS and LPG for the purpose of direct melting of raw material like quartz, sand, soda ash, cullet, calcite etc in the furnace. They had a furnace, which was heated with LSHS and LPG to reach the desired temperature of 1600ºC which would initiate melting. It appears from the order of the assessing authority that the Advance Ruling Committee has ruled that as per Rule 20(2)(b) of the Rules, input tax credit was not allowed on fuels used for automobiles or used for captive power generation or used in power plants and had further ruled that the word "fuels" used in Rule 20 of the Rules was used to mean all products which broadly answer the description of similar items under Schedule VI of the Act.

Now in the light of these observations, let us see Rule 20(2) of the Rules. We are concerned with sub-sections (a) to (d) and (h) of Rule 20 (2), which read as under-

> (a) all automobiles including commercial vehicles/two wheelers/three wheelers required to be registered under the Motor Vehicles Act 1988 and including tyres and tubes, spare parts and accessories for the repair and maintenance thereof; unless the dealer is in the business of dealing in these goods.
>
> (b) Fuels used for automobiles or used for captive power generation or used in power

plants;

(c) Air conditioning units other than used in plant and laboratory, restaurants or eating establishments, unless the dealer is in the business of dealing in these goods

(d) Any goods purchased and used for personal consumption

(e) .....

(f) .....

(g) .....

(h) Natual gas, naptha and coal unless the dealer is in the business of dealing in these goods

The Advance Ruling Committee and the assessing authority connected the fuels used in Rule 20 (2) (b) of the Rules with the automobiles, which find a place in Rule 20 (2) (a) of the Rules. The fuels used for automobiles or used for captive power generation or used in power plants are only the fuels covered under Rule 20 (2) (b) of the Rules and the fuels which are not used for automobiles or not used for captive power generation or not used in power plants do not fall under Rule 20 (2) (b) although they may be fuels. Therefore, in our view, the assessing authority as well as the Advance Ruling Committee was clearly in error to hold that LSHS and LPG were fuels within the meaning of Rule 20(2)(b) of the Rules. Other relevant provisions of this Rule have also been mentioned hereinabove and we do not find that LSHS and LPG fall under any of these sub-rules. Section 13 of the Act provides credit for input tax subject to the condition that an input credit tax shall be allowed to the dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer. No input tax credit shall be allowed in respect of the tax paid on the purchase of goods specified in Schedule VI.

Learned Special Standing Counsel for Commercial Taxes wants us to hold that the LSHS and LPG fall under item 2 of Schedule VI. Item 2 of Schedule VI is “petrol”. Item 3 is aviation motor spirit and any other motor spirit, item 4 is aviation turbine fuel and item 5 is diesel oil. It may be noted that items 3, 4 and 5 are all petroleum products. If the intention of the legislature was to include all petroleum products in Schedule VI, then it would have not named different petroleum products as items 2, 3, 4 and 5 in the Schedule. Diesel is a well-known petroleum product, but diesel oil was also mentioned separately as item 5 in Schedule VI. We have been told that LSHS and LPG are obtained from refineries at the last stages of fractional desalination and is therefore called residual petroleum product also. If all the petroleum products were sought to be included in Schedule VI then, in our view, there was no need to have four items. Only one item would suffice to say all petroleum products. Therefore, we are satisfied that the impugned order of the assessing authority cannot be sustained, as LSHS and LPG are not covered by Schedule VI of the Act.

The writ petitions are allowed and the impugned orders passed by the respondent as well as the Advance Ruling Committee are set aside. No order as to costs.

W.P.No.25547 of 2006: This writ petition arises out of the fact that the refund was ordered to be made, but it was deferred in view of the assessment orders, which were challenged in Writ Petition Nos.19492 and 19493 of 2006. Since the assessment in those two cases has now been set aside by this Court, therefore, there remains no basis for the respondent to deny the refund to the petitioner. Therefore, the writ petition is allowed. No order as to costs.

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(Bilal Nazki, J)

Dated 20th August, 2007

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(S.Ananda Reddy, J)

Note: L.R.copies to be marked
(b/o)
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